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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable Brian M. Gibbons, Circuit Court Judge

Opinion No. 6113

THE STATE,

RESPONDENT,

V.

HAROLD GENE WHITE, III,

APPELLANT

APPELLATE CASE NO. 2022-000579

PETITION FOR REHEARING

On February 2, 2025, this Court affirmed Appellant's convictions in *State v. White*, Op. No. 6113 (S.C. Ct. App. filed July 2, 2025) (Howard Adv. Sh. No. 24 at 16). Pursuant to Rule 221(a), SCACR, counsel for Appellant respectfully requests that this Court rehear this matter as to Issue I, based upon significant points overlooked and/or misapprehended by this Court.

I.

The court erred where it failed to suppress evidence seized pursuant to search warrants, where the affidavits were insufficient to support a finding that there was a fair probability

contraband or evidence of a crime would be recovered, since the evidence should have been excluded pursuant to the Fourth Amendment and article I, section 10.

The drugs in this case were seized pursuant to a search warrant for Appellant's home. R. 297 – 302. Law enforcement also obtained a separate warrant to search the home of Appellant's mother (Yolanda Adams). R. 340, ll. 18-20. The warrant to search Appellant's home was issued on April 17, 2017, after toxicology results indicated Appellant's infant (Child) had fentanyl in her system when she died at Adams's home on March 29, 2017. R. 299; R. 28, ll. 1-4. Child had been at Appellant's home earlier in the day, and either Adams or her friend Rawlinson picked Child up from Appellant's home and took her to Adams's home. Adams then fed Child a bottle of formula and cereal and took a nap with Child in Adams's bed. Several other people were present in Adams's home. Adams asked one of them, Pettrey, to watch Child while she took her own children to a doctor's appointment. When Adams returned, she found Child dead. R. 299.

Although no fentanyl was found during the search of Appellant's home, other drugs were recovered—marijuana, cocaine, hydrocodone, and oxycodone. R. 301. Appellant was indicted and tried for possession and possession with intent to distribute those drugs. R. 499 – 505. Appellant was convicted of possession with intent to distribute hydrocodone, second offense; possession of oxycodone, second offense; possession of cocaine, second offense; and possession with intent to distribute marijuana. R. 283; R. 284, l. 1 – 3, l. 17; R. 292, l. 23 – 13, l. 8; R. 506 – 512.

At trial, Appellant moved to suppress the evidence found pursuant to the search warrant for his home. He challenged the existence of probable cause. R. 19, l. 10 – 22, l. 22; R. 50, l. 5 – 71, l. 11. This Court concluded that the "totality of circumstances" "established a fair probability

that incriminating evidence related to the cause of Infant's death" "*would be found in either White's or Adams's home* despite the passage of nineteen days since Infant's death." *State v. White*, Op. No. 6113 (S.C. Ct. App. filed July 2, 2025) (Howard Adv. Sh. No. 24 at 22) (emphasis added). As to the search of Appellant's home, Appellant respectfully asserts this Court misapprehended Appellant's argument regarding probable cause.

Respectfully, the question of whether there was a fair probability evidence would be found in either Appellant's home or in his mother's home was not the proper framework for determining this issue. The question is whether there was a fair probability evidence of the crime would be found in Appellant's home, because probable cause must be individualized to the place to be searched. *See Illinois v. Gates*, 462 U.S. 213, 238 (1983) (the task of the issuing magistrate is to determine whether "there is a fair probability that contraband or evidence of a crime will be found *in a particular place*") (emphasis added); *Maryland v. King*, 569 U.S. 435, 467 (2013) (Scalia, J., dissenting) ("the Fourth Amendment's Warrant Clause forbids a warrant to 'issue' except 'upon probable cause,' and requires that it be 'particula[r]' (*which is to say, individualized*) *to 'the place to be searched*, and the persons or things to be seized'"); *State v. Kinloch*, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014) ("A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in *a particular place*.") (emphasis added); *State v. Thompson*, 419 S.C. 250, 256–57, 797 S.E.2d 716, 719 (2017) (the crucial question is "whether it is reasonable to believe that the items to be seized will be found *in the place to be searched*."). The affidavit did not set forth facts as to why law enforcement believed the child was exposed to fentanyl by Appellant or while at Appellant's home. Child had been at Adams's home for approximately six hours. Child had been transported to Adams's home by either

Adams or her friend Rawlinson. Adams then fed Child a bottle of formula and cereal, and Adams napped with Child in Adams's bed. These facts, as presented to the magistrate, did not support a determination there was probable cause to believe that Child was exposed to fentanyl while at Appellant's home. Whether there was probable cause to search the home of Appellant's mother was a separate question, and the existence of probable cause to search the mother's home cannot stand in for probable cause to search Appellant's home. For purposes of the warrant for Appellant's home and the suppression motion regarding that search, the place to be searched was Appellant's home, not his mother's. The probable cause determination had to be individualized to Appellant's home. There was no probable cause to search this "particular place"—*Appellant's* home. *E.g.*, *Illinois v. Gates*, 462 U.S. at 238; *State v. Kinloch*, 410 S.C. at 617, 767 S.E.2d at 155.

The affidavit for the search of Appellant's home was conclusory, and did not support a finding of probable cause. *See Gates*, 462 U.S. at 239 ("Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient. His action cannot be a mere ratification of the bare bones conclusions of others.").

Law enforcement obtained a subsequent search warrant for Appellant's phone on April 25, 2017. R. 303 – 307. A search of the phone turned up text messages the State used in its trial of Appellant for the drugs found in his home during the execution of the April 17, 2017, search warrant. State's Exhibit #37. Appellant also moved to suppress the evidence found pursuant to the search of his phone. R. 50, l. 9 – 71, l. 11. As to the search of Appellant's phone pursuant to the subsequent search warrant, this Court concluded "the totality of the circumstances set forth in [the] April 25 affidavit established a fair probability that incriminating evidence related to the cause of Infant's death would be found in data extracted from the cell phone seized in the April

17 search of Appellant's home." *State v. White*, Op. No. 6113 (S.C. Ct. App. filed July 2, 2025) (Howard Adv. Sh. No. 24 at 22).

As to the search of Appellant's phone, respectfully, this Court misapprehended Appellant's argument regarding probable cause. Law enforcement got the search warrant for the telephones after it executed the search warrant on Appellant's home and after it had received the laboratory report analyzing the drugs found there—none of which were fentanyl. Moreover, the April 25 warrant for the telephones did not state there were any drugs found during the execution of the prior warrant. R. 306. The wording of the affidavits for the search of Appellant's home and for the search of his telephone was almost identical. R. 299; R. 306. For the same reasons there was no probable cause to search Appellant's home, there was no probable cause to search the telephones found in Appellant's home. No facts were provided to the magistrate to indicate a fair probability that evidence related to Child's death would be found on the telephones. There was no connection made between the telephones and Child's death. The magistrate was simply provided with conclusory statements to the effect that Child had fentanyl in her system when she died at Adams's home and the police wanted to look at the phones found during the search of Appellant's home. The affidavit was conclusory; it was not supported by probable cause. *See Gates*, 462 U.S. at 239 ("Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient.").

As to the searches of both Appellant's home and his telephone, respectfully, this Court misapprehended or overlooked Appellant's arguments regarding staleness; the opinion did not address staleness beyond concluding there was probable cause to search Appellant's home "despite the passage of nineteen days since Infant's death." *State v. White*, Op. No. 6113 (S.C. Ct. App. filed July 2, 2025) (Howard Adv. Sh. No. 24 at 22). The search warrants were issued

nineteen days (home) and twenty-seven days (phones) after Child's death. Probable cause dissipates with time. There was no timely and direct nexus between the contraband sought and the location and items searched. *See Thompson*, 419 S.C. at 257, 797 S.E.2d at 719 (information contained in an affidavit providing a timely and direct nexus between the contraband sought and the location to be searched . . . is sufficient to support a search warrant); *State v. Simmons*, 430 S.C. 1, 13, 841 S.E.2d 845, 851 (2020) ("[A]n affidavit in support of a search warrant 'must state facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time.' Moreover, 'the reason for this rule is that probable cause, with time, dissipates.'") (quoting *State v. Winborne*, 273 S.C. 62, 64, 254 S.E.2d 297, 298 (1979)). The warrants did not support a finding of probable cause given the lack of a timely and direct nexus between the contraband sought (evidence of fentanyl administration to Child weeks earlier) and the place and item to be searched (Appellant's home and telephone). The information was stale. *Thompson*, 419 S.C. at 257, 797 S.E.2d at 719.

For the above reasons, the evidence should have been excluded as fruit of the poisonous tree since it was obtained in violation of the Fourth Amendment. U.S. Const. amend. IV. *See Wong Sun v. United States*, 371 U.S. 471, 484-85 (1963) (Generally, evidence derived from an illegal search or seizure is deemed fruit of the poisonous tree and is inadmissible.").

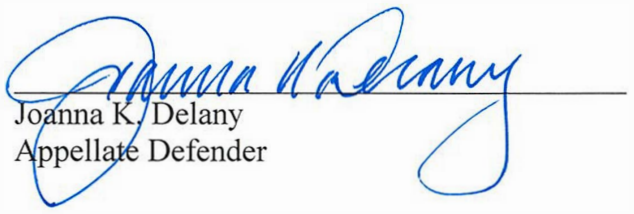
Finally, this Court, respectfully, overlooked Appellant's argument the searches violated his explicit right against unreasonable invasions of his privacy under the South Carolina Constitution. The opinion did not address this argument. The authorities used Cellebrite to extract old text messages on Appellant's phone. State's Exhibit #37. The South Carolina Constitution "affords a higher level of privacy protection than the Fourth Amendment." *State v. Counts*, 413 S.C. 153, 170, 776 S.E.2d 59, 68 (2015) (citing *State v. Weaver*, 374 S.C. 313, 322,

649 S.E.2d 479, 483 (2007)). "The drafters of our constitutional provision were concerned with the emergence of new technology enabling more invasive searches[.]" *State v. German*, 439 S.C. 449, 473, 887 S.E.2d 912, 924 (2023), cert. denied, 144 S. Ct. 1011 (2024). *See also Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 330, 882 S.E.2d 770, 846 (2023) (James, J., dissenting) (the "privacy provision in article I, section 10 provides citizens with heightened Fourth Amendment protections, especially protection from unreasonable law enforcement use of electronic devices to search and seize information and communications."). Article I, section 10 protected Appellant from unreasonable invasions of privacy in his home and his telephone. The search of Appellant's home and phone were unreasonable for the reasons explained in the Fourth Amendment analysis above. *See State v. German*, 439 S.C. at 471, 887 S.E.2d at 923 ("We have interpreted South Carolina's express right against unreasonable invasions of privacy provision to provide greater—or, a more 'heightened'—protection than that provided by the United States Constitution.").

Assuming *arguendo* that the searches did not violate the Fourth Amendment, Appellant asserted they violated article I, section 10. Thus, the evidence should have been suppressed. "[S]earches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution resulting in the exclusion of the discovered evidence." *State v. Forrester*, 343 S.C. 637, 644, 541 S.E.2d 837, 841 (2001).

For the above reasons, Appellant respectfully submits rehearing should be granted.

Respectfully submitted,



Joanna K. Delany
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ATTORNEY FOR APPELLANT

This 17th day of July, 2025.

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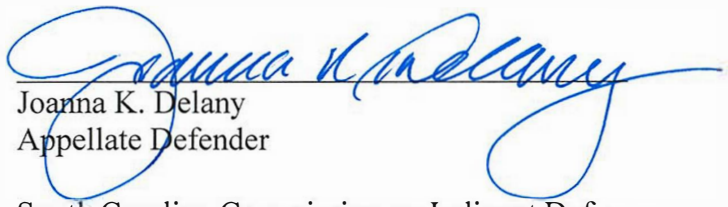
APPELLATE CASE NO. 2022-000579

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-referenced case has been served upon Deborah R.J. Shupe, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Harold Gene White, #387839, at Trenton Correctional Institution, 84 Greenhouse Road, Trenton, SC 29847, this 17th day of July, 2025.



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ATTORNEY FOR APPELLANT

From:	Mcinnis, Sara
To:	Deborah Shupe
Cc:	Abigail Hawley-Browder; Delany, Joanna
Subject:	2022-000579 The State v. Harold Gene White III Petition for Rehearing
Date:	Thursday, July 17, 2025 8:51:00 AM
Attachments:	2022-000579 The State v. Harold Gene White III Petition for Rehearing.pdf AG Cover Letter PFR.pdf

Good Morning Ms. Shupe,

Attached for service in the above-referenced case is the petition for rehearing, which will be filed with the Court of Appeals today, July 17, 2025, via email filing.

Respectfully,

Sara McInnis
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South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330